

Please note: These transcripts are not individually reviewed and approved for accuracy.

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD  
EXCERPT OF BOARD MEETING

ITEM 3

CONSIDERATION OF APPROVAL OF SELECTED COSTS INCURRED BY  
THE DEPARTMENT OF TOXICS SUBSTANCES CONTROL IN RESPONDING  
TO THE WESTLEY TIRE FIRE AND SUBSEQUENT SITE REMEDIATION

GLENDALE CIVIC AUDITORIUM  
1401 NORTH VERDUGO ROAD  
GLENDALE, CALIFORNIA

TUESDAY, MARCH 20, 2001

9:40 A.M.

Doris M. Bailey, CSR, RPR, CRR  
Certified Shorthand Reporter  
License Number 8751

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

A P P E A R A N C E S

BOARD MEMBERS PRESENT:

LINDA MOULTON-PATTERSON, Chair  
DAN EATON  
STEVEN R. JONES  
JOSE MEDINA  
MICHAEL PAPARIAN  
DAVID A. ROBERTI

STAFF PRESENT:

BONNIE BRUCE, Interim Executive Director  
KARIN FISH, Chief Deputy Director  
KATHRYN TOBIAS, Chief Legal Counsel  
MARK LEARY, Deputy Director  
YVONNE VILLA, Board Secretary  
DEBORAH MCKEE, Administrative Assistant

--oOo--

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

Please note: These transcripts are not individually reviewed and approved for accuracy.

iii

I N D E X

	PAGE
Item 3          Discussion of Draft Five-Year Plan Required by SB 876	3
Motion	12,17,29
Certificate of Certified Shorthand Reporter	41

--oOo--

PETERS SHORTHAND REPORTING CORPORATION    (916) 362-2345

1 P R O C E E D I N G S

2 --oOo--

3 BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.  
4 Leary, not through yet. Onto item number three.

5 MR. LEARY: Madam Chair, members of the Board,  
6 Mark Leary again, Special Waste Division.

7 Agenda item three is consideration of approval  
8 of selected costs incurred by the Department of Toxics  
9 Substances Control in responding to the Westley tire fire  
10 and subsequent tire fire remediation.

11 Agenda item three is a follow-on to agenda item  
12 number fourteen from the December Board meeting whereby  
13 the Board allocated, among other money and purposes,  
14 558,000 for the reimbursement to the Department of Toxics  
15 Substances Control and the Regional Water Quality Control  
16 Board for costs incurred in responding to the Westley  
17 tire fire cleanup.

18 As we received the summary of costs incurred  
19 and/or obligated by the department, but have not from the  
20 Regional Board, this item presents for your consideration  
21 a summary of those costs from DTSC only.

22 This item is for consideration of costs only, it  
23 is not an award or a reimbursement. Should the Board  
24 approve costs today, the contract for reimbursement will  
25 be prepared by staff for Board consideration next month.

1           Today's item is analogous to a Board approval of  
2   a scope of work prior to the approval of an award or a  
3   contract.

4           As described in the agenda item, DTSC's costs  
5   can be broken down into two major areas: Those  
6   associated with the emergency response, that is those  
7   that occurred before the fire was extinguished.

8           And secondly, those costs that resulted from the  
9   remediation efforts after the fire was extinguished.

10          This breakdown is provided in the table on page  
11   3-3. These costs are further split within that table  
12   between staff costs, including overhead and contract  
13   costs, extra costs. The grand total of all costs is  
14   \$1,461,139.72.

15          A subset of these costs is identified in the  
16   table on page 3-2. These costs are those that have been  
17   processed and paid to date by the department. This total  
18   is \$330,000, \$330,942.69.

19          Although the bulk of the expenses transmitted to  
20   the Board have not been processed for payment, it appears  
21   likely that they will be paid before the end of the  
22   year. At any rate, as they are entirely external  
23   contractor costs and the monies are obligated in task  
24   orders, these monies are not available to the department  
25   for any other purpose.

1           Attachments one and two provide further detail  
2   on these costs. It's hard not to notice the significant  
3   overhead rate identified in the invoices provided by DTSC  
4   and summarized in these attachments. Board staff  
5   understand that these rates can be explained and, in  
6   fact, are necessary, but have not pursued this  
7   explanation feeling that it was more appropriate for the  
8   department to explain the necessity of these rates if the  
9   Board so wishes.

10           The Board has several options in considering  
11   these expenses while reviewing -- while remaining within  
12   the current fiscal year allocation of \$558,000.

13           The Board may approve costs in excess of  
14   \$558,000 and instruct staff to defer those costs beyond  
15   the 558 for consideration by the Board at a future tire  
16   fund allocation.

17           Secondly, the Board may approve exactly the  
18   \$558,000 and defer consideration of costs until some  
19   later date.

20           Thirdly, the Board may approve some amount of  
21   costs less than \$558,000.

22           Or the Board may not approve any costs.

23           Mr. Ed Lawry, the director of the Department of  
24   Toxics Substances Control is present here today, and I  
25   understand is available for questions.

1                   That concludes my presentation.

2                   BOARD CHAIR MOULTON-PATTERSON:   Okay, thank  
3   you.   We have one public speaker besides Mr. Lawry, would  
4   you like to hear from -- did you want to speak at this  
5   point, Mr. Lawry, or would you rather wait until there's  
6   questions?

7                   MR. LAWRY:   It's up to you.

8                   BOARD CHAIR MOULTON-PATTERSON:   Okay.   We'll  
9   take Elizabeth Mann.

10                  MS. MANN:   I apologize, I have no questions,  
11   thank you.

12                  BOARD CHAIR MOULTON-PATTERSON:   I'm sorry, I  
13   can't hear you.

14                  MS. MANN:   I have no questions.

15                  BOARD CHAIR MOULTON-PATTERSON:   Okay.   Thank  
16   you.   Board members?

17                  Mr. Lawry.

18                  MR. LAWRY:   Good afternoon and thank you for  
19   inviting me to your meeting again.   I must say I enjoyed  
20   being in Glendale watching a very exciting inning between  
21   Glendale Junior College and Citrus College over lunch.

22                  Let me start by addressing the three hundred and  
23   something thousand which was justified by our invoices as  
24   having been paid about a month ago.   That number,  
25   according to my staff notes, is now \$807,759 which has

1    been billed and approved as of invoices from our  
2    contractor work. That's about 68 percent of the cost  
3    which had been contractually obligated.

4               BOARD MEMBER PAPARIAN: I couldn't understand  
5    the number, what is the total again?

6               MR. LAWRY: All right. Let's see if I can work  
7    this. The total cost which has been billed and approved  
8    as invoices from contractors, \$807,759. And that's 68  
9    percent of the costs which have been contractually  
10   obligated.

11              I know there have been some questions about our  
12   overhead rate which is in the neighborhood of 170  
13   percent, more or less. Let me give you a little  
14   background on that little historical reference as well.

15              We are obligated to seek and recover all of our  
16   costs in actions like this where we either oversee the  
17   cleanup of a hazardous waste site or contract for that  
18   cleanup. I believe that we are, perhaps, the only entity  
19   within the State of California which is required by law  
20   to recover all of our costs in that manner.

21              And one way, and certainly not the only way to  
22   figure out what all the costs are of the department, is  
23   to bill absolutely everything directly.

24              Another way to do it, which is what we do, is to  
25   take the direct labor costs of people who are working on



1 the project, and then allocate the rest of the costs of  
2 the department to those labor costs.

3 That would mean, for example, that rent on the,  
4 on our various offices, our regional office at Cording  
5 Way, the Cal EPA building, the Glendale, we have a  
6 Glendale office, would be part of indirect costs, but  
7 they are costs which support the program. And there are,  
8 I believe, three indirect rates which relate to our  
9 various programs.

10 One is our seg mitigation program which is at  
11 issue here; another is the hazardous waste management  
12 program; and our science pollution technology program  
13 also has an indirect rate.

14 Now in 1993, I believe, perhaps 1994, there were  
15 questions raised about whether the indirect rate was  
16 appropriate. And Governor Wilson at that time appointed  
17 a group of people which included members of the  
18 department, one or more accounting firms, and members of  
19 the regulated community to examine those costs and  
20 determine whether or not they were appropriate. They did  
21 that and issued a report in 1995.

22 And one of the things which is required to be  
23 done with those indirect costs now is for them to be  
24 evaluated and set twice a year. And that's why you have  
25 two indirect rates, I believe, in this case. Those

1 indirect rates are reviewed and approved by the  
2 Department of Finance when we submit them to them.

3 For what it's worth, there is a general  
4 consensus that were other agencies which were performing,  
5 which do perform environmental oversight work, to put in  
6 all of their indirect costs, you would see rates within  
7 this magnitude as what we have here.

8 One other indirect rate which I can't help but  
9 mention here is I'm part of the indirect overhead. So my  
10 time coming down here ultimately goes in the indirect  
11 overhead for each of the three programs.

12 And I think that's pretty much all I wanted to  
13 say in introduction. And if anyone has questions I'd be  
14 more than happy to answer them if I can.

15 BOARD CHAIR MOULTON-PATTERSON: Okay.  
16 Questions, Board members?

17 BOARD MEMBER EATON: Mr. Lawry.

18 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton.

19 BOARD MEMBER EATON: Have you ever billed any  
20 other agency?

21 MR. LAWRY: We have billed the, I believe,  
22 Caltrans, Department of Education, Department of Water  
23 Resources, Department of Corrections. We've had  
24 interagency agreements with each of those, these agencies  
25 which include our overhead rate.

1               BOARD MEMBER EATON: Correct. But at the  
2 current time there is no interagency agreement nor has  
3 there ever been an interagency agreement with the  
4 California Waste Management Board on this particular  
5 site?

6               MR. LAWRY: I believe you're correct.

7               BOARD MEMBER EATON: Okay. So we have no  
8 contract at this time?

9               MR. LAWRY: We do not have an interagency  
10 memorandum which has been signed at this time.

11              BOARD MEMBER EATON: Which, I'm unfamiliar with  
12 that, so --

13              Mr. Leary, do you have a memorandum of  
14 understanding?

15              MR. LAWRY: You do not.

16              MR. LEARY: We do not.

17              BOARD MEMBER EATON: So there is no document?

18              MR. LEARY: No.

19              BOARD MEMBER EATON: So that the monies that you  
20 would be seeking here reimbursable, what I'm trying to  
21 get at is under the contract that you have with Caltrans  
22 and some of the other agencies, in there is the agreement  
23 to pay the indirect overhead?

24              MR. LAWRY: I believe so.

25              BOARD MEMBER EATON: Right.

1           MR. LAWRY: Consist with our requirement --

2           BOARD MEMBER EATON: Right.

3           MR. LAWRY: -- that we get reimbursed for all of  
4 our costs.

5           BOARD MEMBER EATON: See, as you well know, you  
6 and I have gone round and round on this, and --

7           MR. LAWRY: Well I'm not sure it's a complete  
8 circle yet, but there have been discussions, yes.

9           BOARD MEMBER EATON: What I can't quite  
10 understand is that, which of these costs, had there have  
11 been no tire fund and had there have been no legislation  
12 of 876, under what statute could you have sought remedy  
13 from this Board for those funds?

14           Because my understanding is -- which of these  
15 costs were in your ordinary course and scope of your  
16 agency's mission, and which of these costs were outside  
17 of that?

18           And that's what I'm trying to determine here in  
19 my own mind because that is critical. It is critical  
20 because you are funded, as we are funded, as every other  
21 state agency or governmental agency is funded based upon  
22 our own mission statements, our own responsibility to  
23 duties, so on and so forth.

24           And what I've had a hard time finding is what  
25 would you have done in the ordinary course and scope of

1 your activities at the Westley site that were over and  
2 above your regular duties and obligations under the  
3 statutes of the State of California?

4 MR. LAWRY: Well it's difficult to answer,  
5 that's obviously a hypothetical question, but let me try  
6 to get it in this way.

7 I think that everything we did there is within  
8 our statutory obligation and authority. Where it gets  
9 tricky, I think, is we were indeed asked by the secretary  
10 and by your department of -- or Board, excuse me, to be a  
11 part of a multimedia effort to address this fire.

12 So the answer is nothing, in terms of would we  
13 have done something, there's nothing outside of what we  
14 are required and obligated to do.

15 On the other hand, we did it in cooperation with  
16 and at the request of, among others, your Board.

17 BOARD MEMBER ROBERTI: Madam Chair.

18 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

19 BOARD MEMBER ROBERTI: I have a question.  
20 Didn't we vote on this two months ago, and aren't we just  
21 having action pending invoices? And what I'm tending to  
22 hear now is a whole repeat of the agenda item. If we do  
23 this we're going to be here until Sunday.

24 BOARD MEMBER EATON: With all due respect,  
25 Senator --

1               BOARD MEMBER ROBERTI: And I mean it  
2 respectfully but I -- okay, now with all due respect,  
3 what were you going to say?

4               BOARD MEMBER EATON: What the issue is is that  
5 if you, and I've got the transcript right here if you'd  
6 like for me to read it.

7               BOARD MEMBER ROBERTI: Yeah, sure.

8               BOARD MEMBER EATON: The actual issue is whether  
9 or not the costs were reimbursable under Senate Bill  
10 876. That was the issue to be determined legally. And  
11 we determined that it was not. That was what was  
12 supposed to be brought forward.

13              MR. LAWRY: I may have been at a different  
14 meeting.

15              BOARD MEMBER EATON: And if that were to be the  
16 case, according to the transcript we were supposed to  
17 have that material in hand as Board members ten days  
18 before the Board meeting, neither of which occurred.  
19 That was the motion.

20              BOARD MEMBER ROBERTI: I thought that was on  
21 what was left over on the old money. The figure we had  
22 arrived at, splitting that in some way, was \$558,000, and  
23 we were waiting on invoices to make sure that the  
24 invoices were consistent with what our obligations,  
25 rights, and responsibilities are.

1           BOARD MEMBER EATON: So are you agreeing that  
2 the Senate Bill 876 monies are not available for  
3 reimbursement to the Department of Toxics?

4           BOARD MEMBER ROBERTI: Are you asking me the  
5 question?

6           BOARD MEMBER EATON: Yeah, because if that's the  
7 case then they can't --

8           BOARD MEMBER ROBERTI: No, I'm not agreeing to  
9 that, but I am saying that that is, that is something  
10 that can be pending while we discuss, while we take  
11 action on the \$558,000 that was the old money.

12           BOARD MEMBER EATON: Correct. And you know I  
13 never challenge the fact of the old money, the 558, that  
14 any monies had to come from that.

15           But Mr. Leary talked, in his opening statement,  
16 about the fact, whether or not the Board wanted to then  
17 put the remainder of the monies that were billed or  
18 invoiced here for future consideration under SB 876.  
19 That brings 876 into play.

20           And I'm saying that 876, SB 876 monies are not  
21 available now or in the future for activities that took  
22 place prior to the enactment of SB 876. And that is  
23 correct, and that is what I understand to be the legal  
24 opinion.

25           Having said that then, you're right, we have

1 558,000 available, and out of that we have to look at  
2 what expenses the Department of Toxics has presented to  
3 us, and whether or not in those costs there are any that  
4 we disagree with, question, want to put to the side, go  
5 forward with.

6 BOARD MEMBER ROBERTI: And the number of  
7 expenses that you have come up, I believe, are somewhere  
8 in the vicinity of \$800,000?

9 MR. LAWRY: We have \$800,000 in invoiced  
10 contracts which have been approved. We have encumbered,  
11 to use a word in a, a technical word in a somewhat  
12 non-technical sense, about \$1.4 million. The 800,000 you  
13 talked about does not include any direct employee labor  
14 or overhead.

15 BOARD MEMBER ROBERTI: Madam Chair, if it is in  
16 order, I would like to formalize our vote of two months  
17 ago that we make a motion, that I make a motion that we  
18 make a payment of \$558,000, and appropriation of the  
19 money which I feel we have already encumbered. And then  
20 we will discuss the rest of the money and what fund it  
21 will come from on another agenda item, later on today,  
22 whatever.

23 But I think the issue before us right now is the  
24 558, pursuant to action the Board has already taken.  
25 This is just a formal appropriation of monies that we



1 have already encumbered, and to unencumber them would  
2 take another vote of the Board.

3 BOARD MEMBER EATON: When did we take the vote,  
4 Senator Roberti?

5 BOARD MEMBER ROBERTI: I think it was four to  
6 two in December.

7 BOARD MEMBER EATON: Well that, that vote right  
8 here didn't have anything to do with what you're speaking  
9 of with regard to the costs associated here. And we can  
10 have a discussion of what the costs are, can we not?

11 BOARD CHAIR MOULTON-PATTERSON: Do we have  
12 any --

13 BOARD MEMBER EATON: Within the 558,000?

14 BOARD CHAIR MOULTON-PATTERSON: Do we have any  
15 comment from staff?

16 BOARD MEMBER EATON: It may be your position  
17 that each and every invoice submitted by the Department  
18 of Toxics is okay.

19 BOARD MEMBER ROBERTI: Well I don't know.

20 BOARD MEMBER EATON: That's your position and I  
21 understand that position. But I'm just trying to  
22 determine what the costs are based upon the fact that  
23 we've gotten a summary of the costs, and per your own  
24 agreement in the motion, we were supposed to get invoices  
25 and an analysis of the Department of Toxics costs ten

1 days before this Board meeting.

2 MR. LAWRY: Right. You got 'em from us,  
3 invoices and analysis from us, and we've talked at length  
4 with your staff. I don't know what your relationship is  
5 with the staff, but we got it all over there.

6 BOARD MEMBER EATON: I'm not criticizing you,  
7 Mr. Lawry.

8 BOARD CHAIR MOULTON-PATTERSON: One moment, Mr.  
9 Paparian. Did we get the invoices? It was my  
10 understanding that we did.

11 Mr. Paparian.

12 BOARD MEMBER PAPARIAN: I think a lot of us have  
13 different recollections of what was or wasn't supposed to  
14 happen. I wonder if we could hear from our staff, in  
15 particular our legal staff, what is it that they think is  
16 before us, and what's properly before us to decide.

17 CHIEF LEGAL COUNSEL TOBIAS: I agree that the  
18 agenda item correctly states on previous Board action  
19 that the Board did adopt this resolution which basically  
20 said that the Board was allocating, that the Board was  
21 allocating the so-called old money, or money prior to  
22 876; that it was coming back to this meeting; and that  
23 the Board was going to look at the costs that were in the  
24 invoices and decide what they were going to pay.

25 BOARD MEMBER PAPARIAN: I thought we also had a

1 discussion about how some of the, there are, there are  
2 some pre-876 monies, pre-876 obligations that are out  
3 there that could be spent with 876 money, in particular  
4 the Sukut contract in the order of \$2 million which was a  
5 several year contract and goes well into the period of  
6 876.

7 BOARD MEMBER EATON: Mr. Paparian, I have the  
8 transcript here. There's no recollection of that in the  
9 transcript.

10 BOARD CHAIR MOULTON-PATTERSON: You know, I  
11 would suggest in the future that when we have a meeting  
12 that, you know, we're going back, that we all could have  
13 that part of the transcript. Because it's really unfair  
14 that we don't, we can't all see it, because we're seeming  
15 to have a little problem.

16 BOARD MEMBER EATON: I just went and copied it  
17 out of the morgue which everyone has the opportunity to  
18 do.

19 BOARD CHAIR MOULTON-PATTERSON: Okay. Do you  
20 guys all have it down there?

21 CHIEF DEPUTY DIRECTOR FISH: We don't. Would  
22 you like us to address the issue of the old money versus  
23 the new?

24 BOARD CHAIR MOULTON-PATTERSON: Yes, and I  
25 thought that was decided at the December meeting.

1               BOARD MEMBER EATON: And I have granted that  
2   that issue has been decided that the only monies that are  
3   available are the 558,000.

4               BOARD CHAIR MOULTON-PATTERSON: Okay.

5               BOARD MEMBER EATON: And that any other monies  
6   that can be expended from SB 876 can only occur from this  
7   day forward for work from this day forward. And Mr.  
8   Paparlian is disputing that.

9               BOARD MEMBER ROBERTI: And I have a motion on  
10  the floor.

11              BOARD CHAIR MOULTON-PATTERSON: Senator Roberti,  
12  would you restate your motion?

13              BOARD MEMBER PAPARIAN: I'll second it.

14              BOARD MEMBER ROBERTI: That the \$558,000 from  
15  the pre-876 old money, is that correct, be appropriated  
16  and transferred to Department of Toxics.

17              BOARD MEMBER PAPARIAN: Second.

18              BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
19  Paparlian. We have a motion by Senator Roberti --

20              BOARD MEMBER EATON: And I'll have a substitute  
21  motion here, but I would ask the courtesy of Senator  
22  Roberti and Mr. Paparlian, that you at least grant the  
23  courtesy to another Board member. I've never once ever  
24  cut either of you off, when I was chair or as a Board  
25  member, and I don't appreciate what you're trying to do

1 right now.

2           These are issues here that I think are very,  
3 very long range. And perhaps if you either are unwilling  
4 or unable to see what's going to take place in the future  
5 with regard to other state agencies or other local  
6 agencies coming in and trying to reach the cash register  
7 for these monies, there's a public policy issue behind  
8 this, not just a political decision. And I would ask  
9 that you consider that.

10           I understand what the votes are and where  
11 they're going to line up, but I would at least think that  
12 you would have the courtesy to do that.

13           BOARD CHAIR MOULTON-PATTERSON: You had a  
14 substitute motion?

15           BOARD MEMBER MEDINA: Madam Chair, before you  
16 get to the substitute motion, I've been waiting to get a  
17 question asked, and I haven't had a chance yet to ask my  
18 question related to the \$558,000.

19           And as it states on page 3-1 of the agenda, it  
20 states that the 558,000 to DTSC and the Regional Water  
21 Quality Control Board.

22           And my question is, what are the anticipated  
23 costs that will be allocated to the Regional Water  
24 Quality Control Board? And are they going to come back  
25 and make a claim on the same \$558,000?

1               MR. LEARY: The Board, the Board, I think we  
2   represented back on agenda item fourteen in December that  
3   there were about \$161,000 to the Regional Water Quality  
4   Control Board.

5               We made the Board aware that DTSC had submitted,  
6   the Regional Board that is, that DTSC had submitted their  
7   invoices, and we welcome and encourage their submittal of  
8   invoices for consideration, for the ultimate Board's  
9   consideration. We have yet to receive those invoices.  
10   So we moved this item forward for DTSC's costs alone.

11              BOARD MEMBER MEDINA: So according to resolution  
12   number 2000-487, 558,000 was approved for allocation to  
13   DTSC and the Regional Water Quality Board. So if DTSC is  
14   awarded the 558,000, what happens again when the Regional  
15   Water Quality Control Board comes and makes a claim on  
16   that same money?

17              MR. LEARY: Well there wouldn't be any remaining  
18   expenditure authority this fiscal year for the payment of  
19   those costs. There's a dispute obviously about whether  
20   those costs could be considered in future fiscal years.  
21   There's a discussion ongoing among you all right now  
22   about whether those costs could be considered in future  
23   fiscal years.

24              BOARD MEMBER MEDINA: So as of this point the  
25   Regional Water Quality Control Board has not made any

1 demands --

2 MR. LEARY: No, they haven't.

3 BOARD MEMBER MEDINA: -- on that five hundred --

4 MR. LEARY: No, they haven't.

5 BOARD MEMBER MEDINA: -- 58,000 dollars?

6 MR. LEARY: No, they have not.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.

8 Leary. I want to give Mr. Eaton the courtesy of --

9 BOARD MEMBER EATON: Sure. Mr. Jones wants to  
10 talk as well.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mr.  
12 Jones.

13 BOARD MEMBER JONES: Thank you, members. I have  
14 a couple of questions here, and I appreciate you coming  
15 up and/or down, wherever, I don't know, it's all of 3:00  
16 o'clock.

17 We have, there's two things from where I'm  
18 coming from. One is that in -- and I don't think it's  
19 semantics, I think it's important that we get this line  
20 drawn in the sand to make sure it's right. I gave my  
21 word to Ed Lawry when we were doing 876 that as long as  
22 we had contracts we had no problem, and I am going to  
23 stay with that forever.

24 The other issue is we have an attorney here from  
25 CMS who is part of litigation that we have, or pending

1 litigation that we have at the Westley tire fire site.

2 And I've always looked at those settlement discussions  
3 with a whole array, or a whole range of responsible  
4 parties as being part of what is going to help fund our  
5 reimbursement to different agencies and to ourselves.

6 And I think that clearly has to be part of our  
7 discussions, because I in no way want this discussion,  
8 which may be between two different agencies within Cal  
9 EPA's family, because we do our business in the public  
10 setting, we have very strong feelings and need to talk  
11 about issues to make sure that they're straight. But,  
12 and while I think there are good points on all parts of  
13 this issue, I think it's critical to do a couple of  
14 things.

15 And one is to make a determination that, in  
16 fact, there were two processes, as DTSC has set out.

17 One was the invoices that were for the actual  
18 response when the thing was on fire.

19 And the second was the remediation and cleanup  
20 or stabilization of that site, which in my view is part  
21 of closure and post closure.

22 And that being said, I think we have another  
23 pool of money that not only do we have our existing tire  
24 money that there was evidently an allocation of 558,000  
25 not, I mean there was an allocation, there was a vote,



1 the vote passed four to two. There is yet to be a  
2 blessed SB 876 five-year plan, so we're in limbo there.

3 But we have a third pool of money which is the  
4 settlements for the closure, post closure of the Westley  
5 tire fire site.

6 And I think that, in my view a lot of these  
7 expenses that were incurred are part of closure and post  
8 closure. And so I think while we have the discussion of  
9 what's acceptable and what isn't, I'd like to have the  
10 discussion about, there are parts of this discussion that  
11 I think need to happen, and there are other parts that  
12 could be done in a lot of places.

13 I thought that this agenda item was to see if,  
14 in fact, these bills, that we accepted these bills. That  
15 we said, DTSC is our sister agency, they're going to bill  
16 us. They're not asking us to write them a check today,  
17 are they? Somebody?

18 INTERIM EXECUTIVE DIRECTOR BRUCE: I feel if you  
19 looked at the agenda item I think it's the anticipation  
20 at DTSC that they will be, that 558,000, whatever you all  
21 decide and what part of those bills they will be.

22 BOARD MEMBER JONES: Right, the 558 I think has  
23 already been voted.

24 INTERIM EXECUTIVE DIRECTOR BRUCE: And I think  
25 what we're looking for from the Board is direction on how

1 to craft the contract for the money that was approved on  
2 the four to two vote.

3 BOARD MEMBER JONES: And one of the questions,  
4 the contact on the four to two vote? The four to two  
5 vote was for \$558,000.

6 What I am adding to this discussion, okay, is  
7 the fact that there is closure, post closure money in  
8 remediation.

9 I'm not going to list it, I'm not going to talk  
10 about what it is, everybody knows that there are parties,  
11 it's a confidential negotiation right now. But there are  
12 dollars available.

13 I want to know if this item, in saying yes, DTSC  
14 spent a million, whatever they, whatever they spent, a  
15 million something --

16 MR. LAWRY: A million four.

17 BOARD MEMBER ROBERTI: Madam Chair, could I ask  
18 the question?

19 BOARD MEMBER JONES: -- that we are  
20 acknowledging that that million four is a legitimate  
21 expense, but we're not saying that we're going to write  
22 you a check tomorrow, and let us work through, if it's  
23 acceptable to DTSC and to the other Board members, work  
24 through the issue of what portion of this is appropriate  
25 to come out of the final settlements for the site, which

1 all gets, all that money gets directed to us in the  
2 closure, post closure, and needs to, into the post  
3 closure fund, and that money then gets directed by us to  
4 closure, post closure activities. These are clearly  
5 closure, post closure activities as part of the  
6 remediation.

7 So it's a piece of the, of the discussion that I  
8 don't think we ever had that needs to be included and may  
9 take some of the, may make it a little easier to deal  
10 with to get everybody.

11 Because I mean we have a portion of money that's  
12 going to come out of this remedia -- these settlements  
13 that has to reimburse our programs, as does the Water  
14 Board, as does the Air Board, as does Toxic.

15 But pure and simple, I think that that is a way  
16 to do this, deal with the 558 any way that anybody wants  
17 to, write 'em a check, I don't care.

18 But understand that if we accept this bill and  
19 this relationship, we can fund it from other sources.  
20 They may not get it right away. They're going to have to  
21 wait like we're going to have to wait.

22 But in the future, when SB 876 gets approved by  
23 the legislature and everybody, I gave my word, as did  
24 others, that we would contract with DTSC, that we would,  
25 as the work needs to be done we would get a scope of

1 work, we would determine what was there, get some kind of  
2 an estimate, boom, done. I'm going to stand by my word,  
3 pure and simple; but those were the discussions.

4 Is that, I mean that's what I told Ed the  
5 morning that the bill was going to the, I mean not all  
6 this other stuff, but the morning the bill was going to  
7 the floor that, in fact, that I gave him my word that we  
8 would enter into contracts. Is that fair to say?

9 MR. LAWRY: My recollection is a much shorter  
10 conversation, but it is fair to say what you're saying.

11 BOARD MEMBER JONES: It was a short  
12 conversation, actually broke out of a staff meeting.

13 MR. LAWRY: That's what I recall. With the  
14 Chair's permission I think there probably are two issues;  
15 one is 500 some thousand which we've authorized you, and  
16 have we given you enough justification for you to write a  
17 check tomorrow or whatever timeframe you're talking  
18 about?

19 And the remainder is a contract for, pursuant to  
20 876 to, for other costs which aren't part of the 558 as  
21 you talked about in December.

22 And I think Mr. Eaton and I may have a  
23 disagreement as to whether past work could be authorized  
24 under 876 pursuant to the contract which is executed  
25 tomorrow or not, but I don't know that that's before you

1 today, and I don't know that we have a legal opinion as  
2 to how that works.

3 BOARD MEMBER EATON: And I agree one hundred  
4 percent with you.

5 BOARD MEMBER ROBERTI: Madam Chair.

6 BOARD MEMBER EATON: What I wanted to be able to  
7 do is, I find it very hard that if you have costs before  
8 you -- this is not for you, Mr. Lawry.

9 BOARD MEMBER ROBERTI: Madam Chair.

10 BOARD MEMBER EATON: Mr. Roberti, please.

11 BOARD MEMBER ROBERTI: Well it appears that  
12 nobody can hear on the right side here, and I have a  
13 motion on the floor.

14 BOARD CHAIR MOULTON-PATTERSON: That's right.

15 BOARD MEMBER ROBERTI: And this is being  
16 interminably discussed, no intent to cut everybody off,  
17 but everyone says the \$558,000 is agreed to, except  
18 unfortunately there is no language in our resolution. The  
19 resolution is written as if we didn't do anything in  
20 December, for reasons I cannot figure out, and it appears  
21 that the people who talk the most, with all due respect,  
22 are the ones who get the staff's attention.

23 It's unconscionable that a four vote majority of  
24 the Board has absolutely no action from the staff except  
25 for some blank piece of paper. I would like to know why

1     that is.

2                 I have a motion on the floor, we should have a  
3     vote.

4                 BOARD CHAIR MOULTON-PATTERSON:   Okay.

5                 BOARD MEMBER ROBERTI:   If people don't want to  
6     vote for it, that's fine, I won't be upset.   I do get  
7     upset when a four to two vote of the court, of the, of  
8     the, whatever we are, is treated, is treated as a  
9     non-item.   When everybody else up on the Board agrees  
10    that we did make an appropriation.   We did.

11                The resolution is pathetic, and it will not  
12    match whatever our action was.

13                BOARD MEMBER EATON:   For the first time --

14                BOARD MEMBER ROBERTI:   So I'm not trying to cut  
15    Danny off, Mr. Eaton, I mean he was a great chair, an  
16    intelligent man, and feels these issues very strongly.

17                I feel very strongly the issue of process.   And  
18    we had process in December, it is not being met.   The  
19    staff resolution is blank, and even though everyone on  
20    the Board says we voted on it, we're going to talk and  
21    talk and talk.

22                The other money that we're discussing, yes, that  
23    is an open question, how we're going to pay it, that's an  
24    open question, I agree.

25                But we do need a formal motion on the \$558,000,

1 and there is a motion on the floor.

2 BOARD MEMBER EATON: And I think --

3 BOARD MEMBER ROBERTI: Now Danny, you can talk.

4 BOARD MEMBER EATON: And I think -- well thank  
5 you very much, that's very kind. And I don't mean that  
6 facetiously.

7 I think we're both in agreement and we're both  
8 seeing it from different viewpoints here. My point was  
9 basically that we ought to have an analysis of what those  
10 invoices were. So I share your view that I have nothing  
11 before me, analysis or other before me that gives me what  
12 those costs are.

13 So while you're willing to vote for the 558 on  
14 blind faith or some other good hope, I'm sitting there  
15 and saying I don't understand, there's a NorCal contract  
16 within there. We had a contract with NorCal. Is that a  
17 different contract than what NorCal did for us, or is it  
18 the same contract? There's no analysis of those costs.

19 I agree that we should have been presented with  
20 that today and made a determination of what that 558  
21 would approve. So from that standpoint I think we're in  
22 agreement. The fact is that there's a lack of  
23 information.

24 So if you want to, you know, go ahead, and which  
25 invoices are you going to pick to make up the 558? That's

1     what they're asking us to do now. And before you made  
2     your motion I was trying to get there.

3             BOARD CHAIR MOULTON-PATTERSON: We have a motion  
4     by Senator Roberti, seconded by Mr. Paparian.

5             Please call the roll.

6             BOARD MEMBER MEDINA: Could we have a  
7     restatement of the motion, please, just to make sure that  
8     we're clear on what it is that we're voting for?

9             BOARD MEMBER ROBERTI: We said that we will --  
10    the resolution is useless anyway, so we don't have a  
11    resolution number to deal with.

12            That we appropriate \$558,000 to pay the  
13    Department of Toxics, to pay for a, to pay for invoices  
14    rendered for work which the Department of Toxics  
15    performed on the Westley tire fire site.

16            That -- and I'm adding this because I believe  
17    that it's necessary -- that staff prepare the necessary  
18    contractual language for the pre-876 monies that we are  
19    appropriating;

20            And that this motion is pursuant to the  
21    discussion in December, the vote in December in which we  
22    did receive information which this Board takes  
23    objectively to indicate that those monies were expended,  
24    absent the specific receipts which I grant we do not  
25    have. But we do know there's an expenditure of \$800,000,



1 I think it's reasonable to appropriate \$558,000 of that  
2 money.

3 I do agree with Mr. Eaton, and on this we share  
4 agreement, that I do not think the preparatory work was  
5 at all adequate, this resolution is absolutely useless,  
6 it is blank, and that's not why we have staff to come up  
7 with blanks.

8 BOARD CHAIR MOULTON-PATTERSON: I think we all  
9 agree that we could have had it outlined a little  
10 better. Thank you.

11 Do you have the motion? Is everybody clear on  
12 the motion?

13 Please call the roll.

14 BOARD MEMBER JONES: Madam Chair.

15 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

16 BOARD MEMBER JONES: Just real quickly. On the  
17 bottom of this resolution it says to fill in the task  
18 that you're approving in the 558 grand or whatever. I  
19 would just like you to, if you would amend your motion to  
20 include the emergency response costs in that part of the  
21 motion, because that is not closure or post closure  
22 expense, it is in response to the fire. So you need to  
23 do that because if we get it --

24 BOARD MEMBER ROBERTI: I think that's a point  
25 well taken, and I will incorporate that.

1                   Mr. Lawry, do you have a problem with that?

2                   MR. LAWRY: Well the problem I have is that a  
3 lot of our contractor costs which we've been billed and  
4 approved took place long after the fire started, and if  
5 Member Jones is speaking to everything we spent before  
6 the last ember was out, I'm not sure how that breaks  
7 down. What I do know --

8                   BOARD MEMBER ROBERTI: I see your point. I  
9 think Mr. Lawry is saying, I think you're defining  
10 emergency but that may be very difficult to do.

11                  BOARD CHAIR MOULTON-PATTERSON: Mr. Jones wants  
12 to clarify.

13                  BOARD MEMBER JONES: What I'm trying to say here  
14 is we have two attachments, we don't have your bills, I  
15 mean I don't have 'em, they have 'em. We have two  
16 attachments. One of the attachments is emergency  
17 response for like 73 grand. That is not part of closure,  
18 post closure.

19                  MR. LAWRY: Probably not.

20                  BOARD MEMBER JONES: The rest of it is  
21 expenditure that is remedial. Remedial is part of the  
22 closure, post closure.

23                  So I don't care what portion of remedial gets  
24 added to that total up to 538 or whatever, but it must  
25 include the emergency response because that's

1 appropriate.

2 MR. LAWRY: Capiche, I believe, sir.

3 BOARD MEMBER JONES: Beautiful.

4 BOARD CHAIR MOULTON-PATTERSON: And you agree,  
5 Mr. Senator?

6 BOARD MEMBER ROBERTI: Yes.

7 BOARD CHAIR MOULTON-PATTERSON: Please call the  
8 roll.

9 BOARD SECRETARY VILLA: Eaton.

10 BOARD MEMBER EATON: No.

11 BOARD SECRETARY VILLA: Jones.

12 BOARD MEMBER JONES: Aye.

13 BOARD SECRETARY VILLA: Medina.

14 BOARD MEMBER MEDINA: Aye.

15 BOARD SECRETARY VILLA: Paparian.

16 BOARD MEMBER PAPARIAN: Aye.

17 BOARD SECRETARY VILLA: Roberti.

18 BOARD MEMBER ROBERTI: Aye.

19 BOARD SECRETARY VILLA: Moulton-Patterson.

20 BOARD CHAIR MOULTON-PATTERSON: Aye. Anything  
21 else you need from us?

22 INTERIM EXECUTIVE DIRECTOR BRUCE: Can I just  
23 ask one question for clarification? We will be coming  
24 back next month with the contract that clarifies what you  
25 said. I would just also like to make sure that you have

1 all you need.

2 Attachment one and attachment two provides for  
3 you a summary of the invoices that we were provided.  
4 Where we had requests from Board offices for the actual  
5 copies of the invoices, my understanding is those were  
6 provided.

7 What more would you like as we come forward with  
8 the contract?

9 BOARD MEMBER PAPARIAN: Madam Chair.

10 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

11 BOARD MEMBER PAPARIAN: I think one of the  
12 questions out there is if we wanted to pay for these  
13 costs, how do we make that happen? And I did bring up at  
14 the prior meeting, and I think Mr. Eaton, you will agree,  
15 of the Sukut contract, how much of that money is, is left  
16 to be spent over the next couple of years, whether we  
17 could go back and backfill with pre-876 money, and then  
18 have some of that Sukut money paid for, as I believe,  
19 would be appropriate with 876 money.

20 Anyway, the more urgent issue is if we wanted to  
21 allocate more money to DTSC for their costs, how could we  
22 make that happen?

23 INTERIM EXECUTIVE DIRECTOR BRUCE: I heard that  
24 direction. I think the agenda item as we were addressing  
25 it was addressing specifically the vote that was taken in

1 December on that 558,000. You're asking for a larger  
2 piece that we can come back taking a look at.

3 Hearing what Mr. Jones has said also about some  
4 settlement money that would come out of post closure  
5 could happen, and we'll have to bring that forward too.

6 But I want to make sure you get enough of the  
7 material that we have available, and obviously this  
8 wasn't enough.

9 BOARD MEMBER EATON: I would like an analysis of  
10 what invoices you're going to pay under the 558,000,  
11 because there's obviously, according to Mr. Lawry what  
12 has been submitted and what has been paid, that not all  
13 of those invoices can be paid with \$558,000 because there  
14 is still other invoices over and above that. So which  
15 ones are going to be paid with the 558? Right?

16 INTERIM EXECUTIVE DIRECTOR BRUCE: Right.

17 BOARD MEMBER EATON: Which ones are for  
18 emergency, which ones for non-emergency? Analysis of the  
19 invoices. Which of those contracts with NorCal do we pay  
20 for, did they pay for? Are we being double billed?

21 INTERIM EXECUTIVE DIRECTOR BRUCE: Thank you.

22 BOARD MEMBER EATON: That's just a start. And  
23 then what separation of those legal costs? I mean in the  
24 invoice, it is my understanding, is there are costs for  
25 legal action. Is that correct, Mr. Lawry?

1               MR. LAWRY: Lawyers bill time for these costs.

2               BOARD MEMBER EATON: I'm not sure we would be  
3     paying their or co-defendants or co-plaintiffs or cross-  
4     plaintiffs or cross-defendants costs, as the case may be,  
5     that those should be segregated and then the Board should  
6     look at those. That's all I was trying to get at.

7               That's the analysis that would have been  
8     required for today to avoid a lot of what took place. I  
9     do not understand why we're paying for another agency's  
10    legal bills.

11              MR. LAWRY: Well we'd like to address you with  
12    the information.

13              BOARD CHAIR MOULTON-PATTERSON: Yes, Mr. Lawry.

14              MR. LAWRY: The cost of the work that we do and  
15    the cost to get the money is one of the costs that we are  
16    obligated by law to collect. As I believe here, I think,  
17    I would like to be able to report to my department and  
18    give them some direction.

19              It's my understanding we're going to be talking  
20    about two contracts; one is a contract for \$558,000 which  
21    you just approved, and that seems to be or could be done  
22    by saying Integrated Waste Management Board will pay for  
23    the following invoices A, B, C through X, whatever it is.

24              And the second contract, which you have not  
25    approved, would be for other expenses which we have

1 incurred, and could include what the Board wanted to do  
2 with SB 876 or any other funds.

3 And you have to approve, you haven't approved  
4 that, but I would like to know whether it's a sense of  
5 the Board to talk to your legal staff to put the contract  
6 together as well.

7 BOARD MEMBER EATON: Well I would object to a  
8 second contract since we haven't had any discussion or  
9 legal opinions with regard to SB 876, we haven't even  
10 gotten our five year plan approved. And if there are any  
11 costs that come out of SB 876, as their statutory  
12 language states, it must be for future work, and it must  
13 have a scope of work and be identified as to what that  
14 work happens to be.

15 And I don't have a problem going into those  
16 discussions, but I think they're two separate contracts,  
17 and I don't think we're in a position as the Board to do  
18 that right at the present time.

19 Once the budget subcommittee hearings are over  
20 and we kind of go through that, and you remember you were  
21 in the room when those were discussed with all the  
22 agencies as to the reason for the scope of work so that  
23 everyone could account for the dollars. It wasn't to  
24 point out to Toxics in particular that those funds are to  
25 be expended for cross media activities, it was so

1 everybody would be accounted for and everyone knew what  
2 those charges would be from all of the other agencies.

3 And I don't think we're anywhere near that. We  
4 barely got through that today.

5 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

6 BOARD MEMBER JONES: Just a quick question or  
7 maybe a little direction. There are maybe three issues,  
8 okay.

9 One is the 558.

10 One would be, as I see it, whatever contract  
11 work we're going to do on, through SB 876 on the future  
12 work at the site.

13 MR. LAWRY: Right.

14 BOARD MEMBER JONES: And I think maybe a  
15 contract isn't the right word, but maybe it's an  
16 acknowledgment of these bills.

17 And then the discussion about the money that the  
18 Waste Board put in as a percentage of the total to do  
19 Westley. The dollars that you have coming as the  
20 percentage of what it took to deal with Westley and the  
21 Water Board. Because as part of the discussions around  
22 settlements and lawsuits at that site, there is going to  
23 be a pool of money that needs to be dealt with, and it's  
24 very serious money.

25 It's very clear that state agencies had to hire



1 contractors and deal with the biggest environmental, one  
2 of the biggest environmental disasters to hit the west  
3 coast. That may not be a contract, but it may be what we  
4 need to acknowledge that these dollars are justified and  
5 due. It just may be, the source of the payment may come  
6 from those settlements. And I don't know if that works,  
7 but --

8 MR. LAWRY: I don't know whether it works  
9 either.

10 BOARD MEMBER JONES: But it gets you your  
11 acknowledgment, and it gets us into the appropriate  
12 discussions with those responsible parties.

13 MR. LAWRY: Right.

14 BOARD MEMBER JONES: So --

15 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

16 BOARD MEMBER ROBERTI: I think Mr. Jones is  
17 starting to get to the point of the confusion and I  
18 appreciate it very much.

19 Just to rehash what I thought took place in  
20 December is we had X number of dollars that Toxics wanted  
21 to be, wish list, to be reimbursed for. We had available  
22 to us X number of dollars. We arrived at \$558,000 after  
23 massaging our own figures of other things we had to do,  
24 and we came up with \$558,000.

25 Our vote in December was a percentage, 558,000,

1 of the then unspecified but known accumulated invoices of  
2 the Department of Toxics. We have now appropriated that  
3 money based on further discussion.

4 We do not have those invoices, that vote was not  
5 invoice specific simply because the original vote was  
6 never invoice specific. We were paying for a percentage  
7 of what we could pay for based on the amount of money  
8 that we had in pre-876 monies. That can't be invoice  
9 specific.

10 The contract, as I understand it, and I think  
11 that is similar to what Mr. Jones has been specifying, is  
12 that we will come up with monies that are probably a  
13 percentage of the invoices or may be invoice specific,  
14 but all within the purview of what our original vote was,  
15 and that is a percentage of all the obligations that  
16 Toxics undertook in order to clean up Westley.

17 And so we do need some contractual language for  
18 next month, but I do feel that the appropriation has been  
19 made on a percentage basis simply based on the amount of  
20 money we have, the amount of money that we suspect they  
21 have.

22 BOARD CHAIR MOULTON-PATTERSON: Thank you,  
23 Senator Roberti.

24 Do we have enough for staff?

25 INTERIM EXECUTIVE DIRECTOR BRUCE: We do. Thank

1     you. All right.

2                   BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.

3     Lawry for coming down.

4                   MR. LAWRY: Thank you.

5                   (Thereupon the foregoing item was concluded.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

I, DORIS M. BAILEY, a Certified Shorthand Reporter and Registered Professional Reporter, in and for the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing excerpt of proceedings, Item number three, in shorthand writing; and thereafter caused my shorthand writing to be transcribed by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand as a Certified Shorthand Reporter and Registered Professional Reporter on the 26th day of March, 2001.

Doris M. Bailey, CSR, RPR, CRR  
Certified Shorthand Reporter  
License Number 8751